

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-634

May 25, 2000

PUBLIC UTILITIES COMMISSION
Investigation into Area Code
Relief

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we establish an allocation method for industry shared costs associated with the implementation of thousand block number pooling (TNP). We order all code holders in Maine to share in the costs of implementing TNP in Maine.

II. BACKGROUND

On September 28, 1999, the Federal Communications Commission (FCC) delegated to us the authority to establish a TNP trial.¹ As a condition of that delegation, the FCC required that we “determine the method to recover the costs of the pooling trials.” Delegation Order at ¶ 35. The FCC suggested we be guided by the roadmap it established in its orders relating to cost recovery for implementation of local number portability (LNP). *Id.*

On November 4, 1999, we ordered the implementation of TNP in Maine by June 1, 2000, and named NeuStar, Inc. (NeuStar) as the pooling administrator. On November 18, 1999, we held an implementation meeting with the industry and NeuStar. During that meeting, there were extensive discussions relating to cost allocation and recovery. No decisions were made or agreements reached.

On December 1, 1999, the Hearing Examiner issued a procedural order requesting comments on questions relating to cost recovery. We received comments from Bell Atlantic, Sprint PCS, Lightship Telecomm, LLC, Nextel Communications, Inc., and the Telephone Association of Maine (TAM). In general, the commenters agreed that the industry shared costs would consist of:

1. the cost to download each thousand block to the NPAC database;
2. the costs of NPAC software needed to support pooling; and

¹*In the Matter of Maine Public Utilities Commission, Petition for Additional Delegated Authority to Implement Number Conservation Measures*, CC Docket No. 96-98, Order (September 28, 1999) (*Delegation Order*).

3. the costs associated with NeuStar pooling administration duties.

The commenters also generally agreed that industry shared costs should not be allocated in equal shares but instead allocated on the basis of a carrier's revenues relative to other carriers in the region or on the number of access lines or NXX codes associated with a carrier.

On December 17, 1999, the Commission held a workshop on cost recovery issues, including cost allocation methodologies, types of costs to be allocated, and cost recovery mechanisms. The general consensus reached by the end of the meeting was that shared industry costs should be allocated in a manner similar to the federal LNP formula which based on individual carrier's assessment on the relative percentage of that carrier's intrastate, interstate, and international revenues for the particular NPAC region. No final determination was reached, however, and industry members of the North American Portability Management, LLC (NAPM) agreed to continue contract negotiations with NeuStar on behalf of the industry.

On January 25, 2000, MCI WorldCom, Inc. (WorldCom) filed a Petition requesting that the Commission clarify a statement made in a January 5, 2000 procedural order which referenced the preliminary agreement of carriers to allocate industry shared costs based on a carrier's relative intrastate, interstate, and international revenues for the Northeast NPAC region. Worldcom argued that because the Commission did not have jurisdiction over carriers' interstate and international revenues it could not base its allocation mechanism on those revenues.

On March 1, 2000, the Hearing Examiner issued a second procedural order asking for comments on Worldcom's contention that the Commission could not use international and interstate revenues in its allocation mechanism as well as the issues raised by the ILEC Recovery Task Force.

In its comments, WorldCom reiterated its position that the Commission could not and should not base its cost allocator on a formula that included interstate and international revenues. Bell Atlantic argued that the Commission could base its allocator on interstate and international revenues because use of those revenues as a proxy for allocating costs does not equate to asserting jurisdiction over those revenues. Lightship advocated a mechanism based on carrier's end user revenues and assessed on all certificated carriers in Maine. Finally, TAM urged the Commission to reject WorldCom's contentions and develop an allocator based on intrastate, interstate, and international revenues.

On March 31, 2000, the FCC issued its First Report and Order in its Number Resource Optimization Rulemaking proceeding.² In that Order, the FCC

²*In the Matter of Number Resource Optimization*, First Report and Order, CC Docket No. 99-200 (rel. March 31, 2000) (Order).

established the framework for cost recovery for the national implementation of pooling. The FCC noted that because TNP will not be rolled out at the national level for some time, states should use their own cost recovery mechanism to recover the costs of implementation and administration until the transition to national pooling.³ Order at ¶ 197. The FCC also defined competitive neutrality, designated and defined cost categories, established an allocation mechanism for shared costs, and requested additional costs studies from carriers.

On April 4, 2000, a conference call was held among the parties to this proceeding to further discuss cost recovery issues. During this call, TAM proposed an alternative allocator that would be based upon the relative percentage of a carrier's intrastate, interstate, and international revenues generated by end users in Maine. After considerable discussion, no consensus position was developed.⁴ Also during the call, representatives of the NAPM updated the industry on the status of negotiations with NeuStar on the pooling administrator contract. The representatives indicated that a boiler-plate contract was being developed for use by several states in the Northeast and that whatever allocation mechanism was adopted by the Commission would become an exhibit to the contract, thereby accounting for Maine-specific circumstances.

After the conference call, Bell Atlantic and WorldCom submitted letters indicating their willingness to go along with the alternative allocator suggested by TAM. AT&T reiterated its earlier position that the Commission should adopt the FCC's LNP allocator.

III. DECISION

We believe that a cost allocation mechanism based upon a carrier's relative percentage of intrastate, interstate, and international revenues generated by Maine end users meets the FCC's requirements regarding competitive neutrality as well as our own concerns regarding the fairness of the allocator. We agree with Bell Atlantic and TAM that the Commission's adoption of a mechanism that uses interstate and international revenues for allocation purposes does not raise any jurisdictional issues. Indeed, the Commission already uses gross annual revenues, including interstate revenues, in its determination of the amount to assess carriers for the telephone equipment access fund. 26 M.R.S.A. § 1419-A(5).

We find that such a mechanism, applied to all code holders in the 207 NPA, provides a competitively-neutral allocation of the costs associated with implementing

³It is estimated that national pooling will not begin until at least August of 2001.

⁴WorldCom, Voicestream, Sprint PCS and Nextel supported an allocator based solely on intrastate end user revenues. The OPA, Lightship, Tidewater, and AT&T indicated they were not taking a position. Bell Atlantic and Bell Atlantic Mobile supported use of the FCC's LNP formula while TAM and Mid-Maine supported the use of intrastate, interstate, and international revenues generated by Maine end users.

TNP. Specifically, the allocation does not give any one provider an appreciable, incremental cost advantage over another when competing for a specific subscriber nor does it have a disparate effect on a competing provider's ability to earn a normal return. Order at ¶ 200. The Hearing Examiner will be requesting that all code holders report international revenues generated by Maine end users. Once that information has been gathered, the Commission will tally the three types of revenue for each carrier as well as all revenues reported by code holders. We will then calculate the relative percentage for each code holder and report that information to NeuStar for the purpose of NeuStar's assessment of the industry shared costs. The Hearing Examiner will notify each code holder of both its relative percentage and the total revenues used to calculate the percentage.

The cost allocator we adopt will be applied only to industry shared costs. If a carrier's relative percentage amounts to less than \$50 in allocated costs, that carrier must contribute a minimum amount of \$50 towards the industry shared costs.⁵

We will issue another order shortly which will define the types of costs included in the three categories of costs associated with pooling and which will set forth the cost recovery principles applicable to ILECs.

Dated at Augusta, Maine, this 25th day of May, 2000.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

⁵See Order at ¶ 207 (FCC adopts \$100 minimum for all carriers).

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.